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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 BARTELL RANCH, LLC, *et al.*,
13 Plaintiffs,

14 and

15 RENO-SPARKS INDIAN COLONY,
et al.,

16 Plaintiff-Intervenors,

17 v.

18 ESTER M. MCCULLOUGH, *et al.*,

19 Defendants,

20 and

21 LITHIUM NEVADA CORP.,

Defendant-Intervenor.
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Case Nos. 3:21-cv-80-MMD-CLB

**STIPULATED PROTECTIVE
ORDER**

1 In order to protect the confidentiality of confidential information obtained by
2 the parties in connection with this case or included in the Administrative Record
3 served by Federal Defendants in this case, the parties hereby agree as follows:

4 1. This Stipulated Protective Order shall govern any record of information
5 produced in this action and designated pursuant to this Stipulated Protective
6 Order, including all designated deposition testimony, all designated testimony
7 taken at a hearing or other proceeding, all designated deposition exhibits,
8 interrogatory answers, admissions, documents and other discovery materials,
9 whether produced informally or in response to interrogatories, requests for
10 admissions, requests for production of documents or other formal methods of
11 discovery. This Stipulated Protective Order shall also govern any designated
12 record of information produced, lodged, or served in this action pursuant to
13 required disclosures under any statute, regulation, federal procedural rule, or
14 local rule of the Court, and any supplementary disclosures thereto, including
15 the Administrative Record served and lodged in this case, and any
16 supplementary disclosures thereto.

17 2. Definitions

18 a. The term “Confidential Information” shall mean confidential or
19 proprietary technical, scientific, financial, business, health, medical, or
20 personal privacy or identifying information designated as such by the
21 producing party, any non-public information routinely withheld by
22 Federal Defendants or a third party from the public, or information
23 subject to protection under the Federal Rules of Civil Procedure,
24 Federal law or regulations, or Nevada law.

25 b. For purposes of this Stipulated Protective Order, the United States
26 Bureau of Land Management shall be considered the “Producing
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1 Party” of the documents served as part of the Administrative Record in
2 this action and any supplements thereto.

3 3. Designation of Information

- 4 a. Documents produced, furnished, lodged, or served during the course of
5 this action shall be designated as containing Confidential Information
6 by including the legend “Confidential” in the margin of each page or
7 each document (whether in paper or electronic form). Where a
8 document or response consists of more than one page, the first page and
9 each page on which confidential information appears shall be so
10 designated.
- 11 b. A producing party shall designate its discovery responses, responses to
12 requests for admission, documents included in the Administrative
13 Record, briefs, memoranda, and all other papers sent to the court or to
14 opposing counsel as containing Confidential Information when such
15 papers are served or sent.
- 16 c. A party may designate information disclosed at a deposition as
17 Confidential Information by requesting the reporter to so designate the
18 transcript at the time of the deposition.
- 19 d. A party shall designate information disclosed at a hearing or trial as
20 Confidential Information by requesting the court, at the time the
21 information is proffered or adduced, to receive the information only in
22 the presence of those persons designated to receive such information
23 and court personnel, and to designate the transcript appropriately.
- 24 e. In the event that a producing party inadvertently fails to designate any
25 of its information pursuant to paragraphs 3(a)–(d), it may later
26 designate by notifying the receiving parties in writing. The receiving
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1 parties shall take reasonable steps to see that the information is
2 thereafter treated in accordance with the designation.

3 4. Disclosure and Use of Confidential Information

- 4 a. All Confidential Information produced or exchanged in the course of
5 this case (other than information that is publicly available) shall be used
6 only by the party or parties to whom the information is produced and
7 solely for the purpose of this case.
- 8 b. Except with the prior written consent of other parties, or upon prior
9 order of this Court obtained upon notice to opposing counsel,
10 Confidential Information shall not be disclosed to any person other
11 than:
- 12 i. counsel for the respective parties to this litigation, including in-
13 house counsel and cocounsel retained for this litigation, and
14 clerical, secretarial, and paralegal support staff working under the
15 supervision of such counsel in connection with this action;
- 16 ii. the Court, Court personnel, and court reporters;
- 17 iii. any party, officer of a party, or employee of a party, to the extent
18 deemed necessary by counsel for the prosecution or defense of
19 this litigation, provided that each such person shall execute a
20 copy of the Certification annexed to this Order as Exhibit A
21 before being shown or given any Confidential Information,
22 which executed copy shall be retained by counsel to the party
23 disclosing the Confidential Information and made available for
24 inspection by opposing counsel during the pendency or after the
25 termination of the action only upon good cause shown and upon
26 order of the Court;
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- 1 iv. consultants or expert witnesses retained for the prosecution or
2 defense of this litigation, provided that each such person shall
3 execute a copy of the Certification annexed to this Order as
4 Exhibit A before being shown or given any Confidential
5 Information, which executed copy shall be retained by counsel to
6 the party disclosing the Confidential Information and made
7 available for inspection by opposing counsel during the pendency
8 or after the termination of the action only upon good cause
9 shown and upon order of the Court;
- 10 v. witnesses (other than persons described in paragraph 4(b)(iv)). A
11 witness shall sign the Certification before being shown a
12 document containing Confidential Information. Confidential
13 Information may be disclosed to a witness who will not sign the
14 Certification only in a deposition or court hearing at which the
15 party who designated the Confidential Information is
16 represented. Witnesses shown Confidential Information shall not
17 be allowed to retain copies.
- 18 c. Any persons receiving Confidential Information shall not reveal or
19 discuss such information to or with any person who is not entitled to
20 receive such information, except as set forth herein.
- 21 d. All documents, including attorney notes and abstracts, that contain
22 information designated by another party as Confidential Information
23 shall be handled as if they were designated pursuant to paragraph 3.
- 24 e. The terms of this Order do not preclude, limit, restrict, or otherwise
25 apply to the use of documents at trial or any court hearing, provided the
26 proponent of the evidence gives reasonable notice to all counsel and to
27 the Court. Any party may move the Court for an order that the
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evidence be received in camera or under other conditions to prevent unauthorized disclosure.

- f. Disclosure of Confidential Information pursuant to this Protective Order shall not be deemed to be a public disclosure under the Freedom of Information Act, 5 U.S.C. § 552, et seq.

5. Filing Confidential Information

- a. In the event that any receiving party's briefs, memoranda, exhibits, or other papers of any kind that are served or filed include, discuss, or summarize information designated by another party as Confidential Information the papers must be appropriately designated pursuant to paragraph 3 and governed by Local Rule IA 10-5.
- b. Subject to the procedures set forth herein, no documents containing, or otherwise disclosing Confidential Information shall be publicly filed with the Court. Confidential Information shall be submitted to the Court under seal as follows:
- i. The original signed copy of any pleadings containing, referring to, or otherwise disclosing Confidential Information shall be electronically filed with the Clerk of the Court in the normal manner under the Local Rules of this Court, but the Confidential Information contained, referred to, or otherwise disclosed therein shall be redacted (and bear the stamp "redacted") so that it does not appear in the publicly filed copy of the pleading or filing; and
- ii. Unless otherwise permitted by statute, rule or prior court order, the party shall electronically file the unredacted document under seal, along with a contemporaneous motion for leave to file those documents under seal, consistent with and following the court's electronic filing and service procedures in Local Rule IA 10-5.

- iii. Notwithstanding any agreement among the parties, the party seeking to file a paper under seal bears the burden of overcoming the presumption in favor of public access to papers filed in court. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006); *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 677–78 (9th Cir. 2010).

6. Challenges to Confidential Information

- a. If a party contends that any material is not entitled to confidential treatment, such party may at any time give written notice to the party or non-party who designated the material. The party or non-party who designated the material shall have twenty-one (21) days from the receipt of such written notice to apply to the Court for an order designating the material as confidential. The party or non-party seeking the order has the burden of establishing that the material is entitled to protection.
- b. Notwithstanding any challenge to the designation of material as Confidential Information, all documents so designated shall be treated as such and shall be subject to the provisions hereof unless and until one of the following occurs:
- i. The party or non-party claims that the material is Confidential Information withdraws such designation in writing; or
 - ii. The party or non-party who claims that the material is Confidential Information fails to apply to the Court for an order designating the material confidential within the time period specified above after receipt of a written challenge to such designation; or
 - iii. The Court rules the material is not confidential.

1 c. No party shall be obligated to challenge the propriety of any designation
2 when made, and failure to do so shall not preclude a subsequent
3 challenge to the propriety of such designation.

4 7. All provisions of this Order restricting the communication or use of
5 Confidential Information shall continue to be binding after the conclusion of
6 this action, including through all appeals, unless otherwise agreed or ordered.
7 Upon conclusion of the litigation, a party in the possession of Confidential
8 Information, other than that which is contained in pleadings, correspondence,
9 and deposition transcripts, shall either (a) return such documents no later than
10 sixty (60) days after conclusion of this action to counsel for the party or non-
11 party who provided such information, or (b) destroy such documents within
12 the time period upon consent of the party who provided the information and
13 certify in writing within sixty (60) days that the documents have been
14 destroyed. The provisions of this paragraph shall not be binding on the United
15 States, any insurance company, or any other party to the extent that such
16 provisions conflict with applicable Federal or State law. The Department of
17 Justice, any insurance company, or any other party shall notify the producing
18 party in writing of any such conflict it identifies in connection with a particular
19 matter so that such matter can be resolved either by the parties or by the
20 Court.

21 8. Nothing herein shall be deemed to waive any applicable privilege or work
22 product protection, or to affect the ability of a party to seek relief for an
23 inadvertent disclosure of material protected by privilege or work product
24 protection.

25 9. This Order shall survive the termination of this Action and continue in full
26 force and effect thereafter, and the Court shall retain jurisdiction to enforce
27 this Order.
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10. Any witness or other person, firm or entity from which discovery is sought may be informed of and may obtain the protection of this Order by written advice to the parties' respective counsel or by oral advice at the time of any deposition or similar proceeding.
11. The parties agree to be bound by the terms of this Stipulated Protective Order pending its approval by the Court.

Respectfully submitted this 2nd day of August, 2021.

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9
10 Co-Counsel for Plaintiff-Intervenors
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12 IT IS SO ORDERED
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15 _____
16 United States District Judge
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Date

CERTIFICATION

I hereby certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the Protective Order dated _____, in *Bartell Ranch LLC, et al. v. McCullough et al.*, Civil No. 3:21-cv-80-MMD-CLB. I have been given a copy of that Order and have read it. I agree to be bound by the Order.

I will not reveal the Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information – including copies, notes, or other transcriptions made therefrom – in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information – including copies, notes or other transcriptions made therefrom – to the counsel who provided me with the Confidential Information.

I hereby consent to the jurisdiction of the United States District Court for the District of Nevada for the purpose of enforcing the Protective Order.

DATED:_____.
